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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:20-mj-00223

v.

**GOVERNMENT’S RULE 48(a) MOTION
TO DISMISS**

MICHELLE O’CONNOR,

Defendant.

This Court should dismiss the pending indictment against defendant Michelle O’Connor without prejudice for the reasons that follow.

Rule 48(a) permits the United States to dismiss an indictment “with leave of court.” This Court has “limited discretion” to deny a Rule 48(a) motion, consistent with separation-of-powers principles. *United States v. Garcia-Valencia-Valenzuela*, 232 F.3d 1003, 1007 (9th Cir. 2000). The Ninth Circuit has recognized that a motion to dismiss an indictment without prejudice may be denied in two circumstances: (1) if it is “clearly contrary to the public interest”; or (2) if dismissal would “contribute to prosecutorial harassment.” *United States v. Wallace*, 848 F.2d 1464, 1468 (9th Cir. 1988), *quoting Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977).

The primary purpose for Rule 48(a)'s leave of court requirement is to "protect a defendant against prosecutorial harassment." *Garcia-Valenzuela*, 232 F.3d at 1008. A prosecutor "must explain why the government seeks dismissal so the court may provide a check on prosecutorial behavior." *United States v. Adamidov*, No. 01-72-BR, 2002 WL 31971836 (D. Or. 2002), *citing United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988). If the government satisfies the court that its motion is made in good faith, this Court is "duty bound" to grant it. *Hayden*, 860 F.2d at 1487.

The government seeks to dismiss the pending charge in this case because defendant faces related charges in state court. After conferring with the Multnomah County District Attorney's Office, the government determined that this case should be handled locally. The defense does not oppose this motion.

Dated: November 9, 2020

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney

/s/ Kelly A. Zusman
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Assistant United States Attorney